IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

TUESDAY, THE 20TH NOVEMBER 2007 / 29TH KARTHIKA 1929

WP(C).No. 34181 of 2007(T)

PETITIONER:

P.L.NAVIS, PAYOLI HOUSE,
PADAMUGHAL, KAKKANADU,
COCHIN-30.

BY ADV. SRI.BABU CHERUKARA
SRI.ANZAR BASHEER

RESPONDENTS:

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1. DEPUTY TAHSILDAR(RR),
KANAYANNOOR TALUK, ERNAKULAM,
KOCHIN-11.

2. CANANRA BANK,
TRIPUNITHURA BRANCH,
REPRESENTED BY ITS MANAGER.

3. MRS. ANTONY JOHN,
EYENCHERRY HOUSE, CHUTTUPADU KARA,
EDAPPALLY P.O., COCHIN-24.

BY SRI.RAMADAS R2

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 20/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

V. GIRI ,J.

WP(C).NO. 34181 of 2007

Dated this the 20th day of November, 2007

JUDGMENT

The petitioner availed a loan from the second respondent Bank. The third respondent's husband Mr.Antony John stood as a guarantor for the said loan and an equitable mortgage of the property covered by Ext.P1 is created in favour of the Bank. According to the petitioner, there was no prior acquaintance between the petitioner and Mr.Antony John. Nevertheless, Antony John had mortgaged the property covered by Ext.P1, because the petitioner had paid the entire value of the property covered by Ext.P1.

2. Petitioner defaulted repayment of the loan and therefore the Bank initiated revenue recovery proceedings. Petitioner submits that the bank is unjustifiably proceeding against the personal properties of the petitioner, without exhausting the remedies against the mortgaged property covered by Ext.P1.

3. Apparently, the petitioner seeks a direction to the second respondent to first proceed against the mortgaged property and then only against his personal assets on the premise that he had paid Antony John the entire value of the said property. Assuming that this version is correct, it does not have any impact on the mortgage

created by Antony John at the time when the petitioner availed a loan from the second respondent. The second respondent, at any rate, is entitled to proceed both against the mortgaged property as also the personal assets of the principal debtor, the petitioner. Obviously, the second respondent cannot be expected to adjudicate a dispute as to whether the petitioner has paid Antony John, the value of the property covered by Ext.P1.

4. In the circumstances, I do not find any reason to issue a direction to the Bank to first proceed against the mortgaged property or for that matter, to the revenue officials to refrain from proceeding against the personal properties of the petitioner. It must not be forgotten that the petitioner is the principal debtor. For all these reasons, the writ petition is bereft of merits and the same is dismissed.

V. GIRI, JUDGE

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